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ABSTRACT

This document is a commentary on the opinion of Judge Antell in the case of the American Association of University Professors, Bloomfield College Chapter versus Bloomfield College, et al. The commentary, written by the President of Bloomfield College, is divided into seven sections covering: factual errors and misinterpretations; the blurring of essential distinctions among financial exigency, liquidity, insolvency, and bankrupcy; errors in the assessment of the college's assets and liabilities; misinterpretations of the place of the Knoll in the College's financial profile; intervention of the court in the right of a college's board of trustees to chart its own course; misinterpretations and misunderstandings regarding the president's role in the events in question; cardinal educational principles not addressed and unresolved by the decision. For related documents, see in RIE HE 005 701, HE 005 741, and in CIJE HE 505 216. (MJM)

A COMMENTARY ON JUDGE ANTELL'S DECISION

by

Merle F. Allshouse, President
Bloomfield College

Preface

The following remarks are made as personal observations on the text of Judge Melvin P. Antell's opinion in the case of the American Association of University Professors, Bloomfield College Chapter, et al, versus Bloomfield College, et al, filed in the Superior Court of New Jersey, Chancery Division, Essex County, on June 26, 1974.

These comments are offered in view of the widespread distribution which Judge Antell's decision has had and the probability that it may have a broad effect upon small, private liberal arts colleges for the foreseeable future.

While the position of the AAUP has received wide coverage, Bloomfield College has not been able to use the same media for the presentation of its position. These remarks are made in the hope that those doing serious research on the issue will have the benefit of more data than that provided simply by the AAUP's Committee A Report on Bloomfield College or Judge Antell's decision.

Much of the background data for the following comments can be found in the Bloomfield College reply to the AAUP's Committee A Report which is as yet unpublished, and may be secured through writing the President's office, Bloomfield College. This reply contains extensive documentation dealing with those issues covered in the Committee A Report and will be of great interest to those seeking a full historical account of the events covered in the report. It will also provide valuable background for placing Judge Antell's decision in perspective.

Those reading Judge Antell's decision will understand, and I hope excuse, a certain note of subjectivity which may at times pervade these comments. That bias notwithstanding, these observations are written with the earnest hope that those seeking a balanced and objective understanding of the tragic situation surrounding Bloomfield College will be better informed.

As of this writing, it is not certain that Bloomfield College will be able to operate fully for the 1974-75 academic year, to say nothing of appealing Judge Antell's decision. Should the College not be in a position to work through the appeal process, then it is all the more important that the higher education community have the benefit of these comments in view of the serious and potentially damaging allegations which Judge Antell has drawn regarding individual persons associated with Bloomfield College.

Introduction

During the early spring of 1973, in what seems like a torrent of letters between the AAUP and Bloomfield College, I expressed my apprehension to both

Dr. Bertram Davis and Dr. Jordan Kurland that the unwillingness of the AAUP to discuss with us ways of approaching our financial exigency would only precipitate the financial collapse and bankruptcy of the College. We are only one of many, perhaps hundreds by the end of the decade, colleges facing bankruptcy. Our failure is, in part, a failure of the entire higher educational system to respond to the crises of financial exigency. Bankruptcy cannot be litigated or censured away.

As our reply to the AAUP Report makes clear, we attempted to elicit the support of the AAUP to discuss with us alternatives for reducing the size of our Faculty in the face of drastic enrollment declines. I clearly anticipated that once our efforts were met with the traditional machinery of censure and litigation, our financial situation would only deteriorate further. Our many efforts to negotiate differences with the AAUP out of court were met only with official indifference.

As I anticipated, the AAUP has expressed satisfaction in "winning" the battle, but I feel we all have lost the war. It is a serious indictment of our system of higher education when persons of goodwill cannot negotiate their differences out of court for the welfare of all persons concerned, especially students. When Bloomfield College files for bankruptcy proceedings I certainly will take no pleasure in the self-evident conclusion. The key issue is not that Judge Antell and the AAUP were wrong in not taking our financial exigency seriously but, rather, that we all have something to learn about the system in which we live and work that would permit and even condone such inhumane action.

The following comments are grouped in seven major categories:

I. Factual errors and misinterpretations
   - A. The issue of the "Twelve new faculty"
   - B. Reasons for hiring the new faculty and the position-lines they filled
   - C. The relation of curricular changes made during 1972-73 to the reduction of the faculty from 72 to 54 position-lines
   - D. The reliability of Bloomfield College's enrollment data
   - E. The actual meaning of "one-year terminal contracts" in light of the Board of Trustees' decision of June 21, 1973
   - F. The fallacious assumption regarding an "ulterior design" for the releasing of thirteen faculty members.

II. The blurring of essential distinctions among financial exigency, liquidity, insolvency, and bankruptcy

III. Errors in the assessment of the College's assets and liabilities

IV. Misinterpretations of the place of the Knoll in the College's financial profile

V. Intervention of the court in the right of a college's board of trustees to chart its own course

VI. Misinterpretations and misunderstandings regarding my personal role in the events in question

VII. Cardinal educational principles not addressed and unresolved by Judge Antell's decision.

A. The meaning of financial exigency
B. The relation of academic program planning to personnel decisions during a time of exigency
C. The relation of enrollment declines to financial exigency
D. The role of the court in influencing/directing management decisions for private educational institutions.

I. Factual errors and misinterpretations

It would normally be assumed that during a period of financial exigency no institution would hire additional faculty personnel while it was, at that same time, terminating the services of either tenured or non-tenured faculty. However, it is equally clear, as is pointed out in both the Keast study, Faculty Tenure, and the AAUP's 1972 Guidelines, "On Institutional Problems Resulting from Financial Exigency," that the first priority for economic stability of any educational institution is the character and integrity of its academic program. Thus academic planning must precede personnel decisions. As Keast points out:

> "Although there is general agreement that in staff reductions the interests of the tenured faculty should normally predominate over the interests of those who are on term appointments, sometimes the quality of the educational program may be seriously compromised if that principle is automatically applied. Circumstances can be envisaged in which it may be necessary to terminate a tenure appointment rather than a non-tenured one." [1]

Also, as is clear in paragraph three of the 1972 Guidelines, "On Institutional Problems Resulting from Financial Exigency":

> "Among the various considerations, difficult and often competing, that have to be taken into account in deciding upon particular reductions, the retention of a viable academic program should necessarily come first. Particular reductions should follow considered advice from the concerned departments, or other units of academic concentration, on the short-term and long-term viability of reduced programs." [2]

The method, scope and nature of the design and implementation of any academic plan will vary with the size, governance history, and mission of a given institution. While a large institution may be able to effect a significant percentage decrease in the faculty by charging each department to carry a share of the percentage reduction, a small institution must undergo thorough, comprehensive and coherent academic planning lest it reduce its faculty in an ad hoc fashion and not only cripple essential programs required for the College's continued mission but also be critical for enrollment. As is carefully detailed in the

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1 Keast, William, et al. Faculty Tenure. San Francisco: L. Jossey- Bass Publishers, 1973. p. 87.

2. "On Institutional Problems Resulting from Financial Exigency: Some Operating Guidelines," in AAUP Policy Documents and Reports, 1973 Edition.

College's reply to the AAUP's Committee A Report, such comprehensive planning did take place during the 1972-73 academic year by the Faculty's executive committee, the Faculty Council, the largest and most representative elected body of the Faculty. That planning resulted in the reduction in faculty lines from 72 to 54 by July 1, 1974. During the period while the Faculty Council was making its decisions regarding the nature of the 54 faculty lines, normal vacancies occurred through regular attrition. In each case the administration checked with the Faculty Council to see whether or not, in view of its planning, these vacancies should be filled or left open. Indeed, 12 faculty members were hired during the period of June 30, 1972 and September 1, 1973, but in each case the person filled one of the 54 faculty lines defined by the Faculty Council and did not represent replacements for the 13 who were terminated, nor did they represent 12 new or additional lines created over and above the 54 defined by the Faculty Council. In other words, were the College not to have filled the 12 positions in question, we would have had 42, not 54 faculty by July 1, 1974.

It is extremely curious and disturbing that Judge Antell's decision contains inconsistent assertions regarding the basic facts of why and when the 12 faculty were hired. In view of his severe criticism of this action one would think the Judge would have carefully checked the evidence in record. On page 5 he says, "During the period between June 21, 1973 and the commencement of the school year in September 1973 the College engaged the services of 12 new and untenured teachers to serve on its faculty." This statement is clearly false, since seven of the 12 in question were hired prior to June 21, 1973. On page 6, in connection with the resolution terminating 13 members of the Faculty, Judge Antell writes, "Complementary thereto is the further question as to whether the circumstances were further 'extraordinary' as to allow at the same time for the hiring of 12 new teachers." The facts are otherwise. Twelve new teachers were not hired "at the same time" as the 13 were dismissed. Furthermore, the reasons for hiring the 12 "new teachers" had to do with the academic planning done by the Faculty Council, a fact and process which seem not to have interested Judge Antell. Again on page 8, Judge Antell refers to "the addition of 12 newcomers referred to earlier between June 21, 1973 and September 30, 1973." And finally, on page 24, Judge Antell writes, "the hiring of 12 new faculty members between June 21 and September 30, 1973 (the period during which the action complained of took place) has not been justified by a showing of 'extraordinary circumstances' as required by sub-paragraph C-6 of the Bloomfield College Policies."

It is extraordinary that Judge Antell could have made, in four different places, such an egregious error of fact in dealing with an issue which he thought was so significant to the determination of the case.

The facts, which were presented and fully documented in court, regarding the hiring of 12 "new teachers" are as follows: (1) New faculty hired between June 30, 1972 and June 21, 1973: Professors Adler, Blumberg, Golin, Symonies and Trost. (2) New faculty hired between July 1 and August 31, 1973: Professors Leitner, Ludwig, Moretti, Mulligan, Okwu and Williams. (3) New faculty hired between September 1 and September 30, 1973: Professor Ostling.

B. Reasons for hiring the new faculty and the position lines they filled

On page 24 of his opinion, Judge Antell asserts relative to the hiring of the "12 new faculty:" "The record is lacking, in fact, any evidence from which

it can be determined what the financial consequences of these hirings were, whether they resulted in a savings to the College, and if so in what amount. The explanation that the newcomers were brought in to meet the demands of a modified curriculum is totally unacceptable." This strong language on the part of Judge Antell is disturbing in view of his apparent disinterest during the course of the trial in any discussion or testimony dealing with the process by which academic planning took place during 1972-73 and the criteria used for the defining of 54 positions by the Faculty Council. It is extremely disturbing that the College is now charged with failing to place in the record those very items which we were discouraged from arguing during the course of the case.

For anyone familiar with the facts, it is clear that the College saw no relationship between the hiring of the "12 new faculty" and any financial saving. The issue of the "new faculty" is totally unrelated to the question of financial exigency except insofar as the 12 positions were related to the total 54 positions which were being defined by the Faculty Council. The latter, of course, is the essence of how the Faculty planned to reduce its number from 72 to 54 and thus account for a saving of approximately 25% in the Instructional Budget by July 1, 1974. In saying that "the explanation that the newcomers were brought in to meet the demands of a modified curriculum is totally unacceptable" is indeed curious since the College never attempted to argue such a point. Each of the 12 was brought in, after consultation with the Faculty Council, and after it had been determined that they would be filling one of the 54 faculty lines defined by the Faculty Council.

The following facts regarding each of the 12 were entered in court as part of the College's testimony.

1. Professor Roberta Adler, Assistant Professor of Nursing, filled a position recommended by the Faculty Council constituted by a combining of one-third of Professor McLaughlin's teaching responsibilities, one-third from previously allocated part-time teaching in Nursing and one-third new allocation. The one-third new allocation was justified in view of the rapidly increasing enrollments in Nursing and the need to free Professor McLaughlin to prepare for the accreditation visit by the National League of Nursing in 1974-75.

Professor Aryeh Blumberg, Professor of Business Administration and Economics, replaced Professor George Deane, who was on regular terminal appointment. It was essential that the person holding this position have background in economics, operations research, and quantitative analysis.

Professor Stephen Golin, Associate Professor of History and Interdisciplinary Studies, replaced Professor Charles Croghan, who was returning to full-time teaching in the Department of Religion to replace Professor Easton, who was retiring.

Professor Til Symonies, Assistant Professor Nursing, was a replacement for Professor Katherine Hanley, who was on a regular terminal appointment.

Professor Ronald Trost, Associate Professor of Psychology, was a replacement for Professor Norman Pease, who was on study leave for the fall term, and through the elimination of part-time appointments in Psychology a

full-time slot was provided, especially in view of the critical need for developing the Laboratory Psychology Program as a support for the Nursing curriculum.

2. Professor Marilynn Leitner, Assistant Professor of Nursing, was a replacement for Professor Clare Caffrey, who was on a regular terminal appointment in Nursing.

Professor Allan Ludwig, Associate Professor of Art (Visiting) was a replacement for Professor Barbara Guggenheim, who resigned in August for medical reasons. The Fine Arts position is endowed through a restricted portion of our endowment, the Derendinger Fund, which stipulates that the interest from the endowment must be used for the teaching of Art History.

Professor Frank Moretti, Assistant Professor of Education, was a regular replacement for Professor Bruce Pfaff, who was on a one-year terminal appointment. The certification of our Education Program requires at least two full-time persons in this area.

Professor MaryKay Mulligan, Assistant Professor of Sociology, was a regular replacement for Professor Rita Miller, who resigned in August.

Professor Austin Okwu, Assistant Professor of Black Studies and History, was a regular replacement for Professor Aubrey N'Komo, who was on a regular terminal appointment as Director of Black Studies.

Professor Nancy Williams, Instructor in Nursing, was a normal replacement for Professor Mollie Mathews, who was on a regular terminal appointment in Nursing.

3. Professor Axel Ostling, Assistant Professor of Sociology, was a replacement for Professor Anthony Lazroe, who was on a regular terminal appointment. Through the termination of several part-time appointments, Professor Ostling was also given responsibilities in the Business Department.

It should be clear that seven, not 12, faculty were hired after June 21, 1973. In each case a careful review was made to see whether or not any of those faculty given terminal notice on June 21, 1973 might be able to fill any of the seven slots opened subsequent to June 21.

A review of the positions held, by their background and training, of each of the 13 not renewed on June 21 will make it clear that there is no overlap between those positions and either the seven filled subsequent to June 21, 1973 or the five between June 30, 1972 and June 21, 1973.

It is appalling and alarming that Judge Antell, who appeared to be disinterested in the process of academic planning whereby the 54 positions were defined and the specific reasons for the hiring of the 12 "new faculty members" should, at the same time, erroneously allege in four separate places in his decision that the College hired "12 new faculty between June 21, 1973 and September 1973. But even more appalling than his error regarding the period of time during which the 12 new faculty were added, is his lack of awareness and understanding of the relationship between the process whereby the 54 positions were defined by the Faculty Council and the 12 slots, among those 54, which were filled by the 12 faculty members in question.

C. The relation of curricular changes made during 1972-73 to the reduction of the faculty from 72 to 54 position lines

As noted above, there appears to be a total absence of understanding on the part of Judge Antell of the process whereby the 72 faculty positions were reduced to 54 during the 1972-73 academic year. Prior to the formation of the Commission on Long Range Planning, a committee with representatives from every College constituency, there had been little formal long-range planning or coordination. Beginning in 1971 the Commission served as a non-legislative body attempting to coordinate all facets of institutional planning, particularly curriculum, enrollment and budget planning.

As is thoroughly documented in the reply to the AAUP Committee A Report, the Long Range Planning Commission became alerted to the probability of a severe decline in enrollment during the winter of 1972. At that time all faculty committees were alerted to the enrollment situation and asked to make contingency plans. Reports regarding enrollment projections and their budget implications were given to the Faculty every month and the Faculty Council, charged with long range planning responsibilities by the Faculty Bylaws, was asked to develop a plan for a reduction of about 25% in the number of faculty positions.

Early in February of 1973, I distributed throughout the College community an extensive profile report dealing with the enrollment picture for private higher education nationally, the State of New Jersey, and particularly Bloomfield College. In that report I detailed the consequences of a significant enrollment reduction below the figure of 1,000 indicating that without a significant reallocation of resources we would be facing an operating cumulative deficit in excess of $1,000,000 by 1977-78 were we not to drop below 867 full-time students during 1973-74 and gradually build back up to approximately 1,000 students by 1977-78. (In fact, while our projection of 867 was accurate for 1973-74, we will drop to approximately 527 for 1974-75 with a two-year cumulative operating deficit in excess of $1,000,000).

For a number of years the College had been operating with a student/faculty ratio of approximately 17:1, which was considered high but, nevertheless, acceptable given our overall financial condition. To go any higher than 17:1 would have rendered us far less competitive with the State Colleges and to go much lower would have been financially prohibitive.

In the spring of 1973, the Board of Trustees mandated that the 17:1 student/faculty ratio must be achieved by July 1, 1974, which meant that, presupposing an enrollment stabilization around the figure of 867, we should be down to 54 faculty positions by the July 1 date. Of the 18 to be reduced, five were foreseeable through normal retirement and non-renewal notices, which left a total of 13 to be reduced through a planning process.

For over four months the Faculty Council met almost daily to prepare the most comprehensive and extensive academic plan in the College's history. This plan called for 54 position lines, consolidating a number of departments into discipline areas and making every effort to maintain and strengthen those programs which were considered academically most viable and potentially encouraging areas for student recruitment. Again, this process is given great detail in the College's reply to the Committee A Report. Given this background, it is alarming that Judge Antell did not see any relationship between the process of curricular planning and the reduction in faculty position lines. This basic principle which is underscored in the AAUP's 1972 Guidelines on Planning in Financial

Exigency must be the cornerstone of any institution's plan to respond to financial exigency. Without a sound and coherently developed academic program, any hope of long-term, to say nothing of short-term survival, is most doubtful. Nowhere in his opinion did the Judge address himself to the interrelationship between academic planning and personnel decisions.

On page 8 Judge Antell asserts, "Consideration was given to retaining the discharged faculty members instead of hiring new ones, but this alternative was rejected upon the belief, it is said, that the former would not fit in with proposed program innovations which were envisioned by the College as part of its overall rehabilitation." First, Judge Antell is mistaken in posing an either/or between hiring new personnel and discharging others, as should be clear from the discussion above. Secondly, there was no claim that the "discharged faculty members"..."would not fit in with the proposed program innovations." Rather, it was the case that the 13 faculty discharged held positions which were no longer among the 54 faculty lines. The most senior faculty member among those discharged was immediately offered a position as Professor of Research and Librarian, subject to the completion of his Master of Library Science degree during 1973-74. Others among the 13 were considered for other positions within the institution and each was encouraged to use the 1973-74 year, at full salary, to strengthen cognate areas within his discipline.

On page 9, Judge Antell claims that "... the decision to install the new directions was not made until the fall of 1973, some months after the adoption of Resolution R-58 and after the institution of Plaintiffs' suit." The "new directions" to which Judge Antell refers were the reorganization of 18 departments and three programs into 12 interdisciplinary areas and the adoption of curricular revisions through an extensive study made by the Commission to Explore Alternative Missions during the 1972-73 academic year. This report, which was presented to the Faculty in the spring of 1973 and adopted by the Board at its June meeting, was not implemented until the fall for the obvious reason that course changes affected by this program were not available to students until the fall 1973 semester. There was simply no other time, as anyone involved in academic planning would know, that a program adopted during the spring term could possibly be implemented other than in the fall.

In the same paragraph, Judge Antell asserts, "In any event, the results assertedly anticipated by the new programs are not now seen as attainable. Present projections forecast continued reductions in enrollment." I am not aware of any evidence presented in court, other than the declining enrollment situation, which would lead Judge Antell to conclude that the curricular revisions adopted by the Faculty and implemented during the 1973-74 academic year have not been successful. Indeed, it will take several years to evaluate fully the effectiveness of the changes adopted by the Faculty. Our current declining enrollment is not solely, if at all, caused by the program changes. Most colleges in our area are experiencing declining enrollment, and the negative publicity and uncertainty resulting from the litigation greatly aggravated our difficulty in recruiting new students for 1974-75. A major newspaper in Northern New Jersey, on May 14, 1974 published a front-page headline "Bloomfield College Closes." Indeed, such publicity would warrant our renaming the Admissions Office, the House of Sisyphus.

On pages 24 and 25, Judge Antell claims, "Further, the court is entirely unclear as to the dynamics by which the new directions program was expected to reverse the unfavorable enrollment prognosis. This is notable in view of the fact that the success which the Defendants claim was anticipated never, in fact, materialized." During the trial little, if any, attention was given, by either

side, to the curriculum revisions which were made during the 1972-73 academic year. I testified to the Faculty Council's effort, in the process of defining the 54 faculty lines, to strengthen those areas such as Nursing, which represented upward enrollment trends, and to bolster the programs in career areas, such as Business Administration, Accounting and the Fine Arts. Apparently, Judge Antell is not familiar with the relationship between academic program planning and enrollment trends. Clearly, efforts toward strengthening career programs, bolstering the College's counseling efforts, and increasing the support of services to disadvantaged students are essential to the "dynamics" of any academic program for a college such as Bloomfield.

Judge Antell's claim that the "success which the Defendants claim was anticipated never, in fact, materialized"(page 25) is a most precipitous judgment in view of the fact that at the time it was made the changes to which he referred had not been in effect for even one year. The Judge seemed unaware of the negative effect which the litigation itself, to say nothing of daily newspaper accounts of the College's desperate financial condition, would have upon guidance counselors and hence enrollment for the 1974-75 academic year. Indeed, the fact that we have more than 500 students enrolled for next year may be, in large part, attributable to the academic program revisions made during the 1972-73 academic year.

Throughout Judge Antell's opinion there seems a lack of understanding regarding the process of curricular change, the relationship between the Faculty's adoption of such changes and their initiation in the school calendar, and certainly the relationship between changes made at Bloomfield and enrollment patterns. Bloomfield, in a relatively short period of time, has developed programs specifically geared for the kinds of students enrolled in the traditional "invisible college." Our effort in these directions was recently recognized by the receipt of a major Advanced Institutional Development Program grant from the Department of Health, Education and Welfare. Judge Antell's opinion notwithstanding, it is encouraging to know that many educators reviewing Bloomfield's curricular efforts with a critical eye are encouraged with the progress we have made despite enormous difficulties over the past two years.

D. The reliability of Bloomfield College's enrollment data

Judge Antell's discussion of Bloomfield's enrollment projections and statistics is most disturbing since the facts should have led him to precisely the opposite conclusion.

Referring to the projections which we gave during the course of the trial (in early May) of between 450 and 638 full-time students for the 1974-75 academic year, the opinion reads, "These were given without factual foundation and are said to have been based upon unspecified "demographic studies" (page 7). The range of 450 - 638, as testified to in court, was established on the basis of a normal projection system used by most institutions of higher education, taking existing student enrollment and subtracting the attrition factor and adding new student enrollment. Obviously, during this past year Bloomfield's student recruitment program has been erratic, and prior to preregistration for the fall there was no way of telling with absolute accuracy how many students would be returning. By the end of May we had completed preregistration, and on the basis of those results and tuition deposits for new students we now estimate that our average for 1974-75 will be 527 full-time students. Most registrars would argue that the range we predicted prior to preregistration was exceedingly accurate, given the variables with which we were working.

It is most difficult to understand the Judge's reference to "unspecified demographic studies" (page 7). In the course of our testimony I referred specifically to enrollment demographic studies done by the New Jersey Department of Higher Education, namely, "Regional Demand for Undergraduate Education in New Jersey," Department of Higher Education, Office of Planning and Development, April, 1971, and the subsequent update, "Studies in Higher Education for the State of New Jersey; Projection of Demand for Undergraduate Education in New Jersey by State and County 1973-1990," Department of Higher Education, October, 1973. Among the evidence presented during the trial was the Profile Report, to which I referred earlier and which was issued to the entire College community on February 13, 1973. A large portion of this report deals with demographic enrollment data and extensive use was made of A Fact Book on Higher Education, first issue, 1972, American Council on Education, Washington, D. C., Table 72.9, and Projections of Educational Statistics to 1980-81, 1971 edition, National Center for Educational Statistics, U. S. Department of Health, Education and Welfare, Table 18, p. 37. How can these be called "unspecified demographic studies?"

Referring again to the projections for 1974-75 given during the trial, Judge Antell says, "They are in curious contrast to the projected enrollment of 905 for the same period, gradually increasing to 1030 during the school year 1978-79, which appears on page 17 of the Bloomfield College President's Report, dated March 1974." (page 7) Indeed, it is curious that the Judge finds this discrepancy "curious" since it was carefully explained during the trial. The projection of 905 increasing over a five-year period to 1030 was made during July and August of 1973, when the copy for the 1972-73 President's Report was being drafted. At that time we had every hope of stabilizing the enrollment, which in September was at about the 900 figure. The projections which we gave to the New Jersey Department of Higher Education in October looked toward a stabilization, and perhaps return over a five-year period to our 1970-71 level. We hoped that with the conclusion of the litigation there would be less adverse publicity about the College, and with the Faculty pulling together we would return to normal. Obviously, much transpired between the late summer and early fall of 1973 and the spring of 1974. There is nothing at all curious about the fact that our enrollment plummeted. The drop is due, in large part, to the adverse notoriety we received due to the litigation and the public airing of our financial exigency, on a daily basis in the press, during the course of the trial.

Regarding the spring issuance of the report, the Judge asserts that, "although in final form, it has been decided to withhold the report from public distribution for reasons of economy, not for any errors in its content." (page 7) Given the referral point of late summer early fall 1973, there is no content error in the enrollment projections listed in the 1972-73 President's Report. Obviously, from the point of reference of late April and early May 1974 the projections had been too optimistic and needed revision. It has been my policy to share enrollment projections, on an ongoing and changing basis, with all segments of the College constituency and there has never been any claim that the administration has withheld or "doctored" enrollment figures. If anything, we have been too open and our enrollment projections have, in many cases, been a self-fulfilling prophecy. It is true that the final distribution of the report was delayed until early spring due to various difficulties we encountered in the process of attempting to cut costs in the preparation and printing of the report.

It is important to note that five-year enrollment projections were not done at Bloomfield on a regular basis until 1969-1970. Using 1968-69 as a base year, the history of projected versus actual enrollment has been as follows:

	1968-69	1969-70	1970-71	1971-72	1972-73	1973-74	1974-75
Projected	991	1050	1113	1180	1250	867	527
Actual	991	1005	1069	1214	1069	861	?

Judge Antell asserts, "Although the decreased enrollment for the 1973-74 year was accurately forecast in the spring of 1973, the previous year's projection fell short of the actual enrollment by 131 [sic] students." (page 7) Assuming that he is referring to the 1972-73 year, it is interesting that the issue of the decrease in actual enrollment for that year was never a point in the case. If Judge Antell had been interested in reasons for the decline that year, they certainly could have been given, not the least of which was the fact that in May of 1972 a disgruntled Acting Director of Admissions wrote to every incoming freshman urging him not to enroll in September. The year 1972-73 was also the beginning of the significant fall-off in enrollment experienced throughout institutions of higher education in New Jersey and, of course, in many other parts of the nation.

Referring to the difference between the actual and projected enrollment for 1972-73, Judge Antell says, "This miscalculation was never explained, and is noted with interest for the reason that the faculty reduction from 76 to 54 was deliberately brought about to achieve, supposedly, a 17:1 student/faculty ratio based upon anticipated enrollment for the 1973-74 school year." (page 7) Judge Antell's logic totally escapes this reader at the point where he appears to believe that the administration's over-projection of students for 1972-73 was somehow related to the need to reduce the faculty to 54 positions in view of the further projected decline to 867 predicted for 1973-74. The Judge's logic does seem to be inverted at this point, since were we attempting to make an argument for a smaller faculty, with enrollment projections, we would then under-project rather than over-project. Yet the record shows clearly that in the last six years we have over-projected during four of them. Furthermore, the record of the Long Range Planning Commission during the fall of 1972 and spring of 1973 makes a clear point that I accepted only with reluctance the 867 enrollment figure and made every effort to encourage the Admissions Office to meet a goal of 1,000. A president bent upon using enrollment data for the ulterior motive of reducing tenured ranks certainly would not ardently argue for higher enrollment goals.

Finally, most incomprehensible is the Judge's assertion, in reference to the proposed reduction to 54 faculty positions, "that this decision rested upon data of demonstrated unreliability is pertinent to the determination as to the College's good faith." (page 8) If the Judge's conclusion that the College did not exercise good faith is based upon his reasoning regarding the "demonstrated unreliability of the enrollment data," then we certainly need to take a fresh look at his conclusion regarding good faith. Anyone familiar with enrollment projections for higher education in general, and particularly in New Jersey for a college such as Bloomfield, will be amazed at the degree of accuracy of our projections. Predicting student enrollment today is more difficult than predicting the weather. Apparently, Judge Antell is not familiar with the variables of projecting enrollments today in private, four-year liberal arts colleges, and it is most unfortunate that he has impugned the College's good faith on such a basis. Indeed, if we applied Judge Antell's logic to not only many of our private but most of our public institutions, at least in New Jersey, then the difference between our projected and actual enrollments would constitute a prima-facie case of bad faith within the entire system of higher education. The absurdity of this conclusion should be obvious.

E. The actual meaning of "one-year terminal contracts" in light of the Board of Trustees' decision of June 21, 1973

Throughout the opinion there seems to be a lack of clear understanding regarding the nature of the decisions reached by the College's Board of Trustees on June 21, 1973, despite ample evidence, including copious minutes of the Board, introduced in the course of the trial.

Central to this misunderstanding is the Judge's repeated contention that the Board issued "one-year employment contracts" to members of the Faculty. More precisely, what the Board actually did was to inform all members of the Faculty that their 1973-74 contracts would be interpreted as "one-year terminal contracts" with the understanding that learning contracts would be negotiated on or before December 15, 1973 with those faculty who would be employed beyond July 1, 1974. The teaching-learning contracts were to be for extended (multi-year) periods.

The purpose of this resolution was to enlist the participation of the Faculty's standing committees in the process of designing the teaching-learning contract program and also to allow more time for personnel evaluation so that the greatest amount of peer group evaluation could be completed by December 15.

It is interesting to note that since approximately a month after the June 21 Board meeting the AAUP was certified as the collective bargaining agent for the Faculty, the action of the Board relative to the teaching-learning contracts for those in the bargaining unit was preempted by the requirements of the National Labor Relations Act. However, for those faculty not in the bargaining unit (thirteen, approximately half of whom were tenured), the College kept its good faith and negotiated teaching-learning contracts prior to last December 15. The minimum teaching-learning contract is for two years and the majority are for longer. The notion that the Board sought to substitute a system of one-year rolling terminal contracts for the traditional tenure system is totally false.

Several of those faculty who were tenured and not in the collective bargaining unit are enthusiastic proponents of the teaching-learning contract program and had a significant part in its design.

F. The fallacious assumption regarding an "ulterior design" for the releasing of thirteen faculty members

In referring to the intention of the Board to develop a teaching-learning contract system on or before December 15, 1973, Judge Antell says, "It was a gratuitous challenge to the principle of academic tenure. Its clear implication of ulterior design and lack of sensitivity to the question of moral correctness reflect adversely upon the claimed bona fides of discharging the 13 faculty members for the same given reason." (page 24)

Here Judge Antell again totally misunderstands the critical difference between that portion of the Board's action dealing with the teaching-learning contract system and the approval of the reduction of the Faculty to 54 lines, and hence the issuance of terminal notices to 13 faculty members. The College's Board of Trustees is composed of men with histories of distinguished public service and professional integrity. There is simply no warrant for the Judge's finding of a shadow "ulterior design" behind the Board's action. The Board has always dealt with the Faculty openly and honestly, and at no time did the Board withhold or mask any of its intentions to the Faculty. The primary design of the administration and the Board has been to save a struggling liberal arts college which, for over a decade, has accumulated annual operating deficits.

The teaching-learning contract system was by no means a vicious attack upon the tenure system with some lurking "ulterior design" but, rather, an open and direct attempt to find a common basis for the establishment of a genuine learning community in which faculty members could relate the terms of their contracts to their individual research and learning projects. In a sense, the learning contract is a rider to the normal annual contract received by a faculty member. Provisions were included in the teaching-learning contract to assure academic freedom and reasonable economic security. In fact, at no time did any member of the AAUP or any of the Plaintiffs complain of lack of academic freedom. Academic freedom has not been an issue in this case and, interestingly, the AAUP has never argued that the teaching-learning contract program, as designed and contracted with for those members outside the bargaining unit, did represent a genuine threat to academic freedom. As part of the teaching-learning contract

each faculty member who raises the issue of academic freedom is guaranteed an outside independent review by professional peers before the Board has any right to change or abrogate the contract.

The Judge's astonishing claim that the Board's action showed a "lack of sensitivity to the question of moral correctness" has done great harm to the integrity of many persons who have worked so hard to keep Bloomfield College alive. The questions may sound rhetorical but is it somehow more sensitive to force a college into bankruptcy and have more than a hundred persons lose their means of income rather than attempt an orderly study of the academic program and, as a result of that analysis, reduce 13 faculty lines within the institution, even though some of those may involve tenured faculty? Is it a demonstration of lack of sensitivity on the part of the administration which attempted to place all of the 13 non-renewed faculty in academic positions and, at the same time, guaranteed their full salaries for 1973-74? Is it a lack of sensitivity to the question of moral correctness that led the Board to approve a teaching-learning contract program which would permit each faculty member actually to share in an open and honest way the kind of research and learning experiences which are most meaningful? Is it a lack of sensitivity that led the administration and the Board to design a contract program which would permit each faculty member to use whatever talents he or she might have for the best interests of the students and the faculty member as an individual rather than assume that from tenure until death each faculty member will be teaching three courses per semester with the faint hope of once every seven years, if lucky, receiving a study leave? Was it a lack of sensitivity that led our Board to attempt to breathe new life into an institution which, like so many others, was exhausted with the daily process of merely surviving and yearn for the vigor and enthusiasm of a genuine open and honest learning community?

If trying to answer these questions led us to a "lack of sensitivity to the question of moral correctness," then, indeed, that kind of sensitivity and moral correctness to which Judge Antell refers will be the death of higher education. But finally, I wonder about the sensitivity and degree of moral correctness of a Judge who would use these terms in a way that would so thoroughly damage the lives and careers of persons at Bloomfield College without warrant or evidence. Indeed, our legal system strives for justice, but what is done in the name of justice may not be done in the name of truth and, unfortunately, all too frequently truth does not receive full justice. The assumption that moral correctness and sensitivity are coterminous with one Judge's interpretation of contract law is illustrative of the presumption possible from a court in a litigous society.

II. The blurring of essential distinctions among financial exigency, liquidity, insolvency, and bankruptcy

One of the most disappointing aspects of Judge Antell's decision was his failure to distinguish carefully among key terms such as financial exigency, liquidity, insolvency, and bankruptcy. Since the AAUP and other national professional educational associations have made it clear that colleges may have to reduce their faculties and, indeed, can do so by reducing within tenured ranks, in cases of financial exigency, it is extremely important that this term have something more than an idiosyncratic meaning for each institution. If there is nothing generic to the term "financial exigency," then it ought not be used in guidelines which deal with generic policy.

Relative to the term "financial exigency," Judge Antell claims, "The only definition of exigency which suits our needs is that offered by Webster as 'such need or necessity as belongs to the case.'" (page 20) Aside from the question of what the Judge means by "our needs" is the interesting point that he has chosen the second rather than the first definition of Webster. The first reads as follows: "State or quality of being exigent; urgent want; a case demanding action or remedy." This first definition would certainly apply to that state in which a corporation had no liquidity, was insolvent, and was vulnerable to involuntary bankruptcy. That situation describes Bloomfield College both now and as of June 1973 when the disputed action took place.

On page 26, Judge Antell rendered the opinion that "The financial problem is one of liquidity....It is difficult to say how, by any reasonable definition, the circumstances can now be pronounced exigent." Noting the 1925 Conference Statement of the AAUP, Judge Antell appeared to place great weight upon that portion of the statement which noted that discharges for financial exigency could be made "provided they were taken as a last resort." (page 18) Of course, the question is, last resort before what? It appears consistent throughout Judge Antell's opinion that he means last resort as the day prior to either voluntary or involuntary bankruptcy proceedings. Indeed, if that is to be the legal meaning of financial exigency, then certainly it is inoperative as a therapeutic remedy to the financial condition of any educational institution. I believe most prudent educators would argue that an institution which is insolvent, without liquidity and on the edge of bankruptcy is truly in a situation of financial exigency. It is the failure of Judge Antell to preserve the legitimate grounds for financial exigency that will perhaps work the greatest hardship upon institutions which refer to this decision as a guideline for financial planning.

Both in the equity sense and the bankruptcy meaning of the term, Bloomfield College was and is insolvent. We are insolvent in the equity sense insofar as we are unable to meet our debts as they mature; we are insolvent in the bankruptcy sense in that the aggregate of our property owned is not sufficient in amount to pay the debts of the institution. The latter contention, of course, was debated by the AAUP and involves a difference of opinion as to what the ultimate sale price of the property assets of the institution (the Knoll property and the Bloomfield College site) are worth on the market. This is an issue which perhaps will be resolved only in court through bankruptcy. The College is in a financial position to warrant the filing of a voluntary bankruptcy proceeding under Chapter XI of the Bankruptcy Act as amended by the Chandler Act of 1938. At this point, the critical question is whether or not the provisions of Chapter XI are really applicable to the institution or whether it may have to take full liquidation proceedings. Clearly, we are vulnerable to involuntary bankruptcy from three or more creditors who have provable claims at the time of filing against us, which claims are fixed as to liability and liquidated as to amount and total in the aggregate $500. or more.

Needless to say, it was a shock to all of us who are aware of Bloomfield's financial condition that Judge Antell did not find us financially exigent.

III. Errors in the assessment of the College's assets and liabilities

Judge Antell's assessment of the College's financial situation is tragically superficial and does not reveal an in-depth understanding of academic institutional accounting procedures. While Judge Antell concedes that "the economic

health of the College is poor," he concludes that "a more definitive diagnosis is that the problem is chiefly one of liquidity." (page 13) He then goes on to describe the history of poor cash flow. Then he asserts that, "notwithstanding the problem of cash flow, Bloomfield College is a very substantial educational institution with a net worth of $6,600,000 reflecting assets of $12,600,000 and liabilities of $6,000,000....The College is by no means insolvent, even though it is difficult for it to meet obligations as they mature." (page 14) In estimating the College's total asset worth, the Judge has failed to take into account that the book value of the Bloomfield property may, in fact, not be its sale value and, furthermore, that the reputed sale value of the Knoll, which Judge Antell places as high as $7,000,000 (pages 11-12) was made without any evidence that the property could be sold for that amount as currently zoned.

The facts are that on or about the date that Judge Antell rendered his decision, Bloomfield College's operating liability through June 30, 1974 totaled $1,676,000. Added to that is an additional projected operating liability through June 30, 1975 of $1,667,000, bringing the total to $3,343,000. In addition, both at the Bloomfield property and the Knoll property we have a total liability of ~~$8,478,000~~, bringing the total of operating and property liabilities projected through June 30, 1975 to ~~$11,821,000~~ $8,478,000.

Were we to liquidate all of our property assets immediately at sale prices which have been projected as realistic by independent realtors, we would net from both properties approximately $7,315,000, leaving a deficit of ~~$4,506,000~~ $1,163,000.

If that picture is not bleak enough, let us turn for a moment to the cash flow projections through June 30, 1975. The total cash required to cover our net operating liabilities through June 30, 1974 and our projected operating deficit for 1974-75 is $2,329,000. In order to meet this cash deficit, the only available source is a loan from a consortium of New Jersey banks totaling $835,000, leaving a cash requirement of $1,494,000. As of this date there is no assurance that these funds can be raised from existing constituencies.

These facts notwithstanding, Judge Antell has concluded that the College is not insolvent.

IV. Misinterpretations of the place of the Knoll in the College's financial profile

The place of the Knoll in the College's financial profile has persistently been over-valued and misunderstood by many who were critical of the College's purchase of the property in 1966. It is tragic that Judge Antell's opinion reinforces and underscores this misunderstanding. The opinion claims, "Conservative estimates as to the market value of the Knoll in its present condition lie between $5,000,000 and $7,000,000." The fact is that the AAUP's own property appraisal expert at the trial testified that the $7,000,000 figure would be appropriate only if the property were re-zoned. Hence, at best we are talking about a $5,000,000 figure and, at the time Judge Antell's opinion was written, more likely between $4,000,000 and $4,500,000. At this point, we would have to say that $5,000,000 would be an optimistic sale price for the property.

The opinion goes on to assert that "the net yield to the College out of a $5,000,000 sale, after taxes and the liquidation of secured debts, would be

around $1,536,000." (page 11) The fact is that assuming present property liabilities on the Knoll of $2,730,000 and property closing costs, including commission, legal fees and taxes of $990,000, the property would net at best $1,280,000.

Judge Antell's assessment of the effect of the sale of the Knoll again is misleading. He asserts that, "...its sale would release sufficient cash to meet the College's immediate and reasonably foreseeable financial requirements." (page 12) Then again on page 26, in referring to the sale of the Knoll, Judge Antell says, "...it clearly enhances the probability that it [BC] will be able to continue as a college for the foreseeable future."

In view of the fact that our cash requirements through June of 1975 (even assuming a bank loan of $835,000) totals $1,494,000, it is difficult to understand how the sale of a piece of property which would yield only $1,280,000 would achieve such long-term benefits. Unfortunately, the College is in the position that it must sell not only the Knoll property but also the Bloomfield property in order to meet current cash deficits through June of 1975. Furthermore, nowhere does Judge Antell allow for the reality that only a small portion of the sale price of any piece of property is realizable as cash, especially in today's money market.

V. Intervention of the court in the right of a college's board of trustees to chart its own course

While on the one hand, Judge Antell asserts that he recognizes "the right of the Board of Trustees to make its own business judgments..." (page 26), he provides his own judgment which becomes tantamount to a recommendation that "...its sale would release sufficient cash to meet the College's immediate and reasonably foreseeable financial requirements" (page 12) and "...it [i.e., the sale of the Knoll] clearly enhances the probability that it will be able to continue as a college for the foreseeable future." (page 26)

The simple and hard fact is that the political and economic consequences of Judge Antell's decision have, in fact, set in motion a series of consequences which give his opinion the effect of a set of specific policy imperatives. Perhaps Judge Antell did not intend this consequence of his opinion but outside the court it has had that effect. In short, the opinion has propelled us from a position of financial exigency to bankruptcy through increasing our cash requirements for the 1974-75 budget and, at the same time undercutting the credibility of our effort to secure loans from banking institutions and contributions from traditional supporting constituencies.

There is a curious section in Judge Antell's opinion which develops a most disturbing philosophy of polarization between the interests of the Faculty and the Board of Trustees. The Judge claims "the interests involved, after all, are fundamentally incompatible. Each encroaches upon the other. The expansion of one implies a constriction of the other." (page 21) Certainly, those familiar with the problems of academic governance over the last decade will perceive this to be an incredibly unsophisticated and inaccurate statement of the normative governance relationship for an institution of higher education. There is not a finite pie of power or privilege which is divided in such a way that if one party has a larger piece, the other receives a smaller. Rather, the total power of an institution is expansive and as the interests of the

Faculty and the Board of Trustees are coterminous, the total power of the institution increases. The only image which comes to mind to describe Judge Antell's concept of the relationship between the Faculty and the Board of Trustees is that of a medieval fiefdom and not an institution of higher learning. The Judge goes on to say that "in their collective effect these limitations upon the Board's discretion are as exact and as well defined as the circumstances permit. They reflect a mutual relative judgment as to how the line should be drawn between cardinal values protected by the shield of academic tenure and those intrinsic to the right of an educational institution to chart its own course. Its further clarification must proceed, as is not uncommon, on a case-by-case basis within the framework of variant operational facts." (page 21) While no one would assume that a Board can unilaterally determine policy independent of a set of contractual and legal constraints, nevertheless Judge Antell's opinion has done nothing to clarify the constraints upon a Board's ability to chart a course which would permit the institution to fulfill the original intent of its charter. The effect of Judge Antell's decision is to say that an institution must first go through the process of bankruptcy before any meaningful reorganization or response to financial difficulties can be made. This, in effect, renders meaningless the whole concept of financial exigency and the ability of a Board to respond meaningfully while in the exigent condition.

VI. Misinterpretations and misunderstandings regarding my personal role in the events in question

Apart from the larger issues at stake, the Judge's misinterpretation of my personal beliefs regarding the institution of tenure in higher education is not only personally disturbing but alarming in view of the potential damage which such a judgment can render to an individual's professional life. Should the College, because of bankruptcy, be unable to appeal Judge Antell's decision, his assessment of my personal relation to the events will remain unchallenged and there is no vehicle through which a personal appeal could conceivably be made. The AAUP has done an extremely effective job in creating the image of a public enemy to the point of convincing Judge Antell. Although difficult, I am prepared to live with the fact that in arguing our position we did not feel it necessary to make a personal defense of the absurd ad hominem allegations which the AAUP had made. It never occurred to us that Judge Antell would be seriously persuaded by these allegations. On page 28 Judge Antell indicates his "...impression that the Defendants' primary objective was the abolition of tenure at Bloomfield College, not the alleviation of financial stringency...." He uses even stronger language on page 28 in implying that the financial exigency was a "subterfuge" for the dismissal of tenured faculty. He further asserts that "...Dr. Allshouse's real concern is more fully addressed to balancing problems of long-term concern against basic contractual obligations..." (page 27)

On numerous occasions I have attempted to state my position relative to the tenure issue at Bloomfield as clearly as possible. In brief, it is my conviction that given the magnitude of enrollment reduction to be experienced nationwide in the next thirty years, we must be prepared to explore a series of alternative systems to provide meaningful economic security and a wider range of academic freedom to our faculties than that available under the traditional tenure system. This does not mean that institutions are free to abrogate tenure systems, but it does mean that the entire educational community should be sensitive to the need for developing more flexibility to

deal with institutions as they approach a situation of financial exigency. For many institutions the traditional tenure system will be adequate; for others a quota program may be workable; and for still others there should be alternatives such as learning-contract systems.

My concern at Bloomfield has been nothing other than how to apply the 1972 AAUP Statement "On Institutional Problems Resulting from Financial Exigency," which clearly states that "among the various considerations, difficult and often competing, that have to be taken into account in deciding upon particular reductions, the retention of a viable academic program should necessarily come first. Particular reductions should follow considered advice from the concerned departments, or other units of academic concentration, on the short-term and long-term viability of reduced programs." If Judge Antell's opinion is based upon the fact that in 1972-73 my primary concern was not how to liquidate the institution, he is correct. But he is seriously in error if he believes my interests in the long-term viability of the institution were for any other purpose than that of providing short-term strength. An academic institution which would be incapable of long-term academic planning would have no short-term viability. Bloomfield College's credibility in the competition for financial support is clearly contingent upon our ability to have the kinds of academic programs which are of genuine quality. Is Judge Antell seriously proposing that it is not the president's responsibility to be concerned about the long-term viability of an institution of higher education? Finally, those who have worked closely with me at Bloomfield are well aware that over the past three years we have set records in almost every area of fund-raising in an effort to stave off the condition of financial exigency. The inference that those responsible for the policy decisions at Bloomfield College were more interested in the abolition of tenure than in the alleviation of financial exigency would be dismissed as a ludicrous proposition were it not for the tragic consequences it will have for those members of the administration and Board who have labored at enormous personal sacrifice and with great integrity to alleviate the financial burdens of this institution literally on a day-by-day basis.

VII. Cardinal educational principles not addressed and clearly unresolved by Judge Antell's decision

There are numerous critical issues involving the relations among financial exigency, tenure and academic planning which are left at best systematically ambiguous in Judge Antell's opinion. This is a singular misfortune since the opinion may be used widely and somewhat freely to cover a range of issues which, in fact, are evaded rather than openly addressed.

A. The meaning of financial exigency

The meaning of financial exigency as it might relate to a legal definition of bankruptcy and insolvency is absent in the opinion. If, as is implied by the decision, financial exigency is not a generic term but is idiosyncratic to each institution, then it is imperative that the AAUP and other national educational associations revise their current guidelines regarding financial exigency.

B. The relation of academic program planning to personnel decisions during a time of exigency

Unfortunately, Judge Antell draws no relationship between declining enrollments and financial exigency at Bloomfield College or in general. The Judge

claims that "cases in which dismissals 'for reasons of economy' or in response to decreased pupil enrollment were sustained are based upon specific statutory sanction for the action taken and are inapplicable." (page 18) Nothing could be more basic to Bloomfield College's financial exigency than the history of its recent enrollment decline. Failure to link the economic relationship between enrollment and financial exigency at a small, private liberal arts college may well have tragic implications should Judge Antell's ruling be extended generally.

C. The relation of enrollment declines to financial exigency

I have already referred under Section V. to the serious intervention Judge Antell's opinion has already made in the policy decisions available to Bloomfield College. There is clearly a delicate relationship between the influencing factor which a court opinion will have and the mandating effect which such opinions create. What Judge Antell may have intended as merely a recommendation, when read by the general community will be interpreted as specific policy recommendations, thereby delimiting the actions available to a Board to chart its own course. Perhaps more serious is the fact that Bloomfield's Board acted in good faith in an effort to preserve the fiscal integrity of the institution and, at the same time, provide for a viable future through which the charter of the institution could be implemented. The bankruptcy proceedings that are now imminent have clearly been precipitated by events since Judge Antell's decision and have, in part, been either influenced or caused directly by that decision. Hence, although perhaps not doing it willfully, Judge Antell has affected the future of this institution in a most serious manner.

D. The role of the court in influencing/directing management decisions for private educational institutions

Nowhere in the decision is there any recognition of the relationship between academic planning and staff reduction. Clearly, the AAUP's guidelines "On Institutional Problems Resulting from Financial Exigency" and guidelines issued by other national associations have pointed to the critical need first to make careful academic plans prior to staff decisions. This was done at Bloomfield College through an excruciatingly intricate and difficult planning procedure that involved the appropriate standing committees of the Faculty. Judge Antell seems to have been disinterested in the issue of the planning process and has reduced the entire matter to one of contract law. If we universally extended the implications of this judgment, it would mean that no institution should really bother to go through the process of careful academic planning since the issue of whether a program should be maintained, or whether there are students to be taught, is really irrelevant to the issue of whether a contract is binding.

Conclusion

I hope these comments will be helpful to those who are interested in the issues raised by the Antell decision and that before reaching a final judgment regarding the veracity of the opinion all facts will be weighed carefully. One conclusion is more outstanding than any other, namely, educators should work diligently to keep their internal affairs as far as possible from the civil courts. The court, by and large, is simply not prepared by training or experience to deal with the delicate issues surrounding a claim of financial exigency which involves careful attention to matters as diverse as academic

planning, fund accounting, and enrollment demographic projections. Issues with which we live daily may be novel to the court and explaining the obvious is frequently more difficult than it might appear. The court's reality frame is created by the argument before the bench, and the world that exists outside the courtroom becomes irrelevant to the Judge's decision. A Judge in the Superior Court of New Jersey has literally determined the destiny of an institution that, as far as I know, he has never visited, and has been asked to render a judgment having been exposed to only a small cross-section of its total institutional life.

Perhaps out of the Bloomfield case will emerge a greater sensitivity on the part of the higher education community in general to a tragedy which can occur when issues that should and could have been resolved outside court are suddenly plummeted into litigation.

Finally, I am concerned about how we care for the individuals -- our faculty, administration, staff and students -- at institutions facing financial exigency. The July 8, 1974 issue of The Chronicle of Higher Education carried an article entitled, "Victory for Tenure: Professors Win at Bloomfield." How can anyone claim to have "won" in a situation which will require the bankruptcy of the institution and the probable loss of employment not only for the entire faculty but for dozens of administrators and staff members and also seriously disrupt the educational futures of hundreds of students. Will the AAUP, which supported the Plaintiffs in the case, now come to the financial aid of faculty members who will no longer be drawing salaries? It is indeed a bitter price of victory to have "won" but to be without a job. In today's educational situation, a win-lose mentality is a dangerous attribute. Perhaps those reading the Bloomfield case will be persuaded that the rewards of reconciliation and negotiation are far greater than the "victory" of a court suit which precipitates the demise of an entire institution.